IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 750 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REVABEN D/O CHHAGANBHAI SUKHABHAI VASAVA

Versus

SPL.LAQ OFFICER

Appearance:

1. First Appeal No. 750 of 2003

MR KM SHETH for Appellant

MS. HANSABEN PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 13/04/2005

ORAL JUDGEMENT

ADMITTED.

2. Since the issue involved in this appeal runs in a

narrow compass and also the amount involved under the appeal is meager, by consent of the learned advocates appearing for the parties, the matter is taken up for final hearing today and decided by this order.

3. Instant appeal u/s 54 of the Land Acquisition Act 1894 ('the Act' or short) is directed against the judgement and award dated 13.2.2001 rendered in Land Reference Case No. 102 of 1989 by the learned Civil Judge (SD), Bharuch, by which the market value of the acquired land of the claimant came to be determined at Rs.150/= per Are and awarded an additional amount of compensation of Rs.50/= per Are (Rs.150/= per Are determined by it - Rs.100/= per Are fixed and paid by the Land Acquisition Officer) together with the statutory benefit u/s 23[(1A)] and 23(2) of the Act and also interest u/s 28 of the Act.

4. The agricultural land of the claimant situated at village Dorakuva came to be acquired by the Special Land Acquisition Officer for the public purpose of construction of Dam at village Andara Kachalla. A notification u/s 4 of the Act was published on 21.7.1988 and notification u/s 6 of the Act was published on 6.10.1988. Thereafter various stages of acquisition proceedings were followed and in reply to notice issued u/s 9 of the Act the claimant lodged his claim for Rs.35000/= per acre for the acquired land. The Land Acquisition Officer, considering the claim made by the claimant and the price of the lands located in the immediate vicinity of the acquired land, fixed the price of the acquired land at Rs.100/= per Are and accordingly gave his award on 19.11.1988 and accordingly fixed the value of the land at Rs.100/= per Are together with statutory benefits under the Act.

5. Aggrieved thereby, the claimant sought reference u/s 18 of the Act before the Land Acquisition officer. The Land Acquisition Officer referred that reference to the District Court, Bharuch which was placed before the learned Civil Judge (SD), Bharuch for adjudication.

6. Before the learned Civil Judge (SD), Bharuch also, the claimant claimed that the market value of the acquired land should be paid @ 35000/= per acre. Before the Reference Court, on behalf of the claimant she herself entered the witness box and relied upon the sale instance at exh.21 which is the judgement of the LAR Case No. 2126 of 1992 wherein the Reference Court has determined the market value of the acquired land of village Malpur, Taluka Jhagadia, Dist. Bharuch for the

public purpose of Karjan Canal Yojna, at Rs.10/= per sq.metre. However, the Reference Court has disbelieved the said fact by saying that both the village Malpur and Dorakuva are not adjacent to each other and, therefore, awarded Rs.50/= per Are as additional amount of compensation together with statutory benefit under the Act, which has given rise to this appeal at the instance of the claimant.

7. Mr. K.M.Sheth, learned advocate of the claimant contended that the Reference Court has passed an award contrary to the evidence as it has failed to appreciate that the land in question is similar to the acquired land of village Malpur, Taluka Jhagadia, District Bharuch, wherein the District Court has awarded Rs.10/= per sq. metre, which is adjacent and hardly 2 kmts. away from the land of the claimant, which has resulted into miscarriage of justice. Therefore, according to him, in this case also, considering the judgement and award rendered in LAR Case No.2126 of 1992, the market value of the acquired land may be determined at Rs.10/= per sq. metre. He accordingly urged that the award may be modified by enhancing the compensation by Rs.8.50/= per sq. metre. He, therefore urged to allow this appeal.

8. In Counter submission, Ms.Hansaben Punani, learned AGP for the Respondents contended that the impugned judgement and award does not call for any interference. She, therefore urged to dismiss the appeal.

9. This Court has considered the submissions advanced by the learned advocates appearing for the parties and also perused the impugned award as well as the set of evidence supplied by Ms.Sheth, learned advocate during the course of his submission.

10. On reappreciation, reanalysis and re-evaluation of the evidence adduced and produced before the Reference Court by the claimant as well as by the Land Acquisition Officer, it is seen that on behalf of the Claimant exh.21 was pressed into service which is the judgement and award in LAR case No.2126 of 1992 rendered by the learned Assistant Judge, Bharuch. In the said judgement, the learned Assistant Judge, Bharuch has determined the market value of the acquired land of village Malpur at Rs.10/= per sq.metre which came to be acquired for the public purpose of Karjan Canal Yojna. It is also an admitted position that village Malpur and village Dorakuva are adjacent to each other. There is hardly 2 kmts. distance between both the villages. Notification

u/s 4 of the Act for acquisition of the land of village Dorakuva for which the reference was sought for was issued on 21.7.88 whereas notification for acquisition of land of village Malpur was issued on 3.3.1979. Therefore, there is a time gap of 7 months in issuance of notification. However, the fact remains that both the lands are adjacent to each other.

11. At this stage it would be appropriate to refer to the judgement of the Supreme Court in the case of Thakarsibhai Devjibhai v. Executive Engineer, Gujarat, AIR 2001 SC 2424, wherein in para 12 the Supreme Court has observed as under:

> "As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex. 16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area. Even otherwise visioning in the line with submission for the State we find Ex. 16 is about two hectares of land which cannot be said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot be derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex. 16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distance from the Viraqmgam town. We find, as per map prouced by the State the present acquired land is about 3 kms. away from it, while the land under Ex. 16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh. 16 and the present one are similar. No evidence has been led on behalf of the State to find

difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs.10/= per sq. mtr. cannot be sustained."

12. Applying the principle laid down by the Supreme Court in above referred to judgement, to the facts of the present case, at the cost of repetition, be it stated that distance between the two lands is very negligible which is hardly 2 kmts. The Reference Court ought to have relied upon the judgement rendered in LAR Case No. 2126 of 1992, produced at Exh. 21. Therefore, according to this Court, the Reference Court ought to have determined the market value of the acquired land at Rs.10/= per sq.metre by relying upon the judgement and award in LAR Case No.2126 of 1992 which is produced at Exh. 21. Therefore, according to this Court the impugned judgement and award requires interference. The Reference Court has committed error in not following the said judgement. This Court has therefore determined the market value of the acquired land at Rs.10/= per sq. metre.

13. The Land Acquisition Officer has fixed the market value of the land at Re.1 per sq. metre. The Reference Court has paid an additional amount of compensation at 0.50 paise per sq. metre, therefore, in all paid 1.50 per sq. metre of the acquired land since this Court has determined the market value of the acquired land at Rs.10/= per sq. metre, the claimant is now entitled to Rs.8.50/= per sq. metre as an additional compensation of the acquired land, including other statutory benefits under the Act.

14. Seen in the above context, this appeal deserves to be allowed by modifying the award as stated above.

15. For the foregoing reasons, the appeal succeeds and accordingly it is allowed with no order as to costs. The judgement and award dated 13.2.2001 rendered in Land Reference Case No. 102 of 1989 by the learned Civil Judge (SD), Bharuch determining the market value of the acquired land at Rs.150/= per Are is hereby modified and resultantly, the market value of the acquired land is determined at Rs.10/= per sq. metre and therefore the claimant is entitled to receive an additional amount of compensation of of Rs.8.50/= per sq. metre. together with statutory benefits under the Act.

(A.M.Kapadia,J)

Jayanti*